

ENTERED

August 26, 2020

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISIONEDGAR SPINOSO, *et al*,

Plaintiffs,

VS.

BLUE CROSS AND BLUE SHIELD OF
TEXAS, A DIVISION OF HEALTH CARE
SERVICE CORPORATION,

Defendant.

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CIVIL ACTION NO. 4:19-CV-3482

ORDER ADOPTING MEMORANDUM AND ORDER

Pending before the Court in the above referenced proceeding is Defendant's Motion to Dismiss (Doc. No. 17) and Defendant's Motion to Strike Portions of An Affidavit and Certain Exhibits Attached to Plaintiff's Response to Defendant's Motion to Dismiss (Doc. No. 19); Plaintiff's response (Doc. No. 18); and Judge Stacy's Memorandum and Recommendation (Doc. No. 36). Neither party filed objections to the Memorandum and Recommendation and the time for doing so has passed.


Upon review, the Court agrees with the Magistrate Judge's conclusion that Defendant's Motion to Dismiss be granted in part, and that Plaintiffs' state law breach of contract and insurance code violations claims be dismissed with prejudice as preempted by ERISA. As to the Defendant's Motion to Strike, the Court also agrees with the Magistrate Judge's conclusion that the motion should be granted in part and Plaintiffs be granted leave to further amend their pleadings if they so desire. Accordingly, it is hereby

ORDERED that the Memorandum and Recommendation (Doc. 36) is **ADOPTED**. Defendant's Motion to Dismiss (Doc No. 17) is **GRANTED in PART**. Plaintiffs' state law

breach of contract and insurance code violation claims are **DISMISSED** with prejudice as preempted by ERISA. It is further

ORDERED that Defendant's Motion to Strike (Doc. No. 19) is **GRANTED in PART**. Plaintiffs are granted leave to amend their pleadings, if they so desire, by September 25, 2020.

SIGNED at Houston, Texas, this 25th day of August 2020.

A handwritten signature in black ink, appearing to read 'Andrew S. Hanen', is written over a horizontal line.

ANDREW S. HANEN
UNITED STATES DISTRICT JUDGE